

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.5946 of 2009

IN/ AND

MACMA No.2633 of 2015

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COMMON JUDGMENT:

This appeal is filed by the (3rd respondent--Insurer in claim petition) National Insurance Company, having been aggrieved by the Order/Award of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-District Judge, at Nizamabad (*for short, 'Tribunal'*) passed in O.P.No.291 of 2006, dated 31.01.2009, of Rs.4,15,000/- in favour of petitioners, who are parents of deceased out of claim of Rs.6,00,000/- in the claim petition filed under Section 166 (1) (c) of M.V Act.

2. The contentions in the grounds of appeal in nutshell are that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal ought to have seen that the insurance Company is not liable to indemnify the insured since he has violated the policy conditions by allowing a person to drive the van, who has no proper driving licence. The quantum of compensation and interest awarded by the Tribunal is highly excessive and exorbitant hence to reduce the same. The counsel for the appellant—Insurer reiterated the said contentions in the course of hearing

4. Heard learned standing counsel for appellant. Regarding the appearance of respondents/ claimants from the vacate stay petition filed and Respondent No.3 even served failed to attend, hence taken as heard. Perused the material on record.

5. The Tribunal has taken the income of the deceased at Rs.3,000/- per month, as the deceased was cleaner of lorry, is proved from the evidence on record. Since the deceased was unmarried, half to be deducted towards personal expenses instead of 1/3rd as rightly contended by the Insurance Company in the grounds of appeal. The claimants, who are parents of the deceased by the time of accident aged about 38 to 40, however there is nothing

on record to prove and the multiplier applicable for the age group 38 to 40 is '15' and if the same is taken including from the parents age, leave about the controversy as to the age of deceased as 21 years, the multiplier applicable is '18'.

6. Taking into consideration the age of parents, the multiplier applicable is '15', after deducting half of the income of the deceased, it comes to Rs.1500/- per month. Then the loss of dependency comes to Rs.2,70,000/- (Rs.1500/- X 12 X 15). Apart from it, an amount of Rs.25,000/- awarded towards funeral expenses, Rs.1,00,000/- towards loss of estate as per the judgment of Apex Court in ***Rajesh vs Rajbir Singh***, Even what the Tribunal awarded of Rs.4,15,000/- is no way excessive but for that there is no cross appeal to enhance.

7. Having regard to the above, the appeal is dismissed while allowing the MACMA MP No.5946 of 2009 to condone the delay of (120) days in filing the appeal against O.P. No.291 of 2006 passed on 31.01.2009 on the file of Motor Vehicles Accidents Claims Tribunal-cum-District Judge, at Nizamabad.

8. Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

03.11.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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MACMA MP No.5946 of 2009

IN/ AND

MACMA No.2636 of 2015

Date: 03.11.2015

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